

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

In re:

Paul Joseph Tanzillo  
Susan Rose Marie Tanzillo,  
  
Debtors.

Case No. 19-55350

Chapter 13

Judge Jeffery P. Hopkins

---

**DEBTORS' OBJECTION TO PROOF OF CLAIM OF  
EAST LITTLE CREEK BURGERS, LLC  
(CLAIM #2)**

---

Now come Paul Joseph Tanzillo and Susan Rose Marie Tanzillo ("Debtors"), through counsel, and object to the following claim:

Claim No.: 2

Claimant: East Little Creek Burgers, LLC  
c/o Weltman, Weinberg and Reis Co., L.P.A.  
965 Keynote Circle  
Brooklyn Heights, OH 44131

Total Claim: \$268,474.50

Disputed Amount: \$268,474.50

Claim Filed: December 27, 2019

A memorandum in support of Debtors' objection is attached.

Respectfully submitted,

THE NESBITT LAW FIRM, LLC  
/s/ Laura M. Nesbitt  
Laura M. Nesbitt (0082629)  
6037 Frantz Rd., Ste 102  
Dublin, Ohio 43017  
(614) 800-0262 – phone  
(614) 808-1627 – fax  
*[laura@nesbittfirm.com](mailto:laura@nesbittfirm.com)*  
*Counsel for Debtors*

---

**MEMORANDUM IN SUPPORT**

---

Debtors have filed this objection to the proof of claim filed by East Little Creek Burgers, LLC (“Creditor”) because they dispute any personal liability owed to Creditor. Because Debtors do not have any personal liability to Creditor, Creditor is not entitled to participate in the distribution of the bankruptcy estate assets. While a notice of assets has yet to be filed by the trustee assigned to this case, Frederick Luper (“Trustee”), Trustee filed an application to employ on September 25, 2019 (Doc. 19) which was ordered by this court on the same date (Doc. 20). Trustee also filed a motion to sell Debtors’ personal property on November 25, 2019 (Doc. 40) and that motion was also granted by this court on January 7, 2020 (Doc. 46). A tax order has also been entered in this case (Doc. 29) requiring Debtors to turnover tax returns and any refunds to the Trustee. Debtors believe a notice of assets will imminently be filed by the Trustee. At this time, Debtors believe based on the claims filed in the case, and should this objection be sustained, the estate is solvent and therefore Debtors have standing to object to this claim.

**I. Background**

Prior to the filing of the order of relief in this case, and undiscovered by Debtors until after filing this case, East Little Creek Burgers, LLC filed a civil lawsuit in Virginia Circuit Court of the City of Norfolk on June 23, 2019. The lawsuit named Restaurant Specialties, Inc. and Paul J. Tanzillo, individually, as defendants. The lawsuit was assigned case number CL19-6650 (“VA case”).<sup>1</sup> No other defendants were named in the VA case.

---

<sup>1</sup> Debtors filed an amended Statement of Financial Affairs on January 8, 2020 (Doc. 47) to properly disclose the VA case.

Also prior to the filing of Debtors' bankruptcy petition, on August 19, 2019 Restaurant Specialties, Inc. ("RSI") filed a judicial dissolution proceeding in Common Pleas Court, Delaware County, Ohio, (the "RSI Dissolution") which was assigned Case No. 19 CVH 08 0452.

On August 20, 2019, Paul Joseph Tanzillo and Susan Rose Marie Tanzillo ("Debtors") filed the instant case for relief under Chapter 7 of the United States Bankruptcy Code.

On December 27, 2019, East Little Creek Burgers, LLC ("Creditor") filed proof of claim #2 in the total amount of \$268,474.50. Debtors dispute any personal liability owed to Creditor and therefore object to Creditor's filing of its proof of claim (POC 2) in this case.

## **II. Law and Argument**

Debtors were not aware of the VA case prior to their bankruptcy filing and it appears that Creditor was not aware of Debtors bankruptcy proceeding because **after the order of relief** in this case imposing the automatic stay pursuant to 11 USC §362, Creditor's VA case proceeded to a default judgment. On August 29, 2019 a judgment was issued in the VA case against RSI. See POC 2 Exhibit D. Further, on October 15, 2019, a judgment was issued in the VA case against Paul J. Tanzillo, individually. Debtors argue that both judgments are void ab initio. Further, Debtors argue that Paul J. Tanzillo (Mr. Tanzillo) was not properly served in the VA case and was not able to defend himself as to the merits of that suit. Finally, Mr. Tanzillo argues that if the VA case were to proceed to litigation on the merits, Mr. Tanzillo would prevail and would not be held personally liable to Creditor.

## **III. Conclusion**

Neither debtor Paul Joseph Tanzillo nor Susan Rose Marie Tanzillo have any personal liability on the claim of Creditor. Paul Joseph Tanzillo, did not execute any personal guarantee

on the debt and the allegations in the underlying VA case cannot lead to a finding of personal liability because Creditor has no private cause of action in the cited VA statute.

Finally, even if debtor Paul Joseph Tanzillo were found to have personal liability to Creditor, debtor Susan Rose Marie Tanzillo does not. Therefore, at best, if this Court determines that Creditor is entitled to recover its claim against Paul Joseph Tanzillo, only the assets Mr. Tanzillo can be used to satisfy the claim of Creditor. The assets of the bankruptcy estate of Susan Rose Marie Tanzillo, while jointly administered in this case, cannot be used to pay Creditor. Even so, to date, there has been no determination on the merits and no valid judgment entered in the VA case regarding liability on Creditor's alleged debt.

WHEREFORE, Debtors respectfully request that this court sustain this objection and order that the claim of East Little Creek Burgers, LLC, Claim #2, be disallowed in its entirety.

Respectfully submitted,

THE NESBITT LAW FIRM, LLC  
/s/ Laura M. Nesbitt  
Laura M. Nesbitt (0082629)  
6037 Frantz Rd., Ste 102  
Dublin, Ohio 43017  
(614) 800-0262 – phone  
(614) 808-1627 – fax  
*[laura@nesbittfirm.com](mailto:laura@nesbittfirm.com)*  
*Counsel for Debtors*

---

### NOTICE OF OBJECTION TO CLAIM

---

The Debtor(s) has filed an Objection to your claim in this bankruptcy case. **Your claim may be reduced, modified, or eliminated.** You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you do not want the court to reduce, modify, or eliminate your claim, then on or **before thirty (30) days from the date set forth in the certificate of service for the objection to claim**, you must file with the court a response explaining your position by mailing your response by regular

U.S. Mail to 170 North High St., Columbus, OH 43215, or your attorney must file a response using the court's ECF System.

The court must **receive** your response on or before the above date.

You must also send a copy of your response either by 1) the court's ECF System or by 2) regular U.S. Mail to:

Laura Nesbitt, 6037 Frantz Rd., Ste. 102, Dublin, OH 43017 and to any other party listed on the certificate of service included with this notice

If you or your attorney do not take these steps, the court may decide that you do not oppose the objection to claim and may enter an order reducing, modifying, or eliminating your claim without further notice or hearing.

---

**CERTIFICATE OF SERVICE**

---

I hereby certify that a copy of the debtors' Objection to Proof of Claim was served (i) electronically, through the court's ECF System on all ECF participants registered in this case at the email address registered with the court and (ii) by ordinary U.S. Mail on January 10, 2020 addressed to:

Paul and Susan Tanzillo  
4818 Berkman Drive, Apt. 2108  
Austin, TX 78723

East Little Creek Burgers, LLC  
c/o Weltman, Weinberg and Reis  
965 Keynote Circle  
Brooklyn Heights, OH 44131

East Little Creek Burgers, LLC  
c/o Gregory J Montero, Registered Agent  
Inman & Strickler, PLC  
575 Lynnhaven Pkwy, Ste 200  
Virginia Beach, VA 23452

/s/ Laura M. Nesbitt  
Laura M. Nesbitt (0082629)  
*Counsel for Debtors*